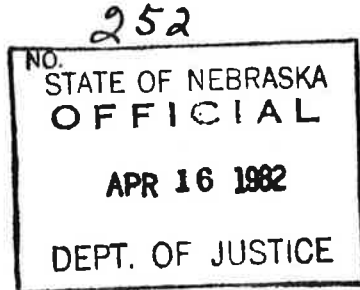


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



April 16, 1982

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Attorney General
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Deputy Attorney General
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Senator Jerome Warner
Nebraska State Legislature
State Capitol
Lincoln, NE 68509

Dear Senator Warner:

You have asked for our opinion on the number of votes required to pass LB 816A under the provisions of the Nebraska Constitution.

You refer of course to Article IV, Section 7 of the Constitution which in part provides: "No appropriations shall be made in excess of the recommendation contained in such budget including any amendment the Governor may make thereto unless by three-fifths vote of the Legislature, and such excess so approved shall be subject to veto by the Governor." LB 816A is an appropriation bill to fund the distribution of state aid to local governmental subdivisions adopted pursuant to LB 816. Prior to LB 816, the Legislature had provided for the distribution of funds to governmental subdivisions in a series of statutes. Pursuant to court action, the statutes setting up the formulas for distribution have been amended by the Legislature in LB 816.

The Governor's budget recommendation as originally sent to the Legislature contained in LB 761, Section 12, Subsections 1 and 2, for programs 146 and 147, \$12,600,000 and \$70,000,000. LB 816A appropriates a total of \$82,600,000. The distribution of the total amount appropriated under LB 816A is different than the distribution which would of occurred under the appropriations recommended by the Governor in his original budget message to the Legislature. The totals, however, remain the same. This question while different is somewhat similar to a question dealt with in

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Opinion No. 49, dated March 20, 1975, Report of the Attorney General 1975-1976. In that opinion we stated that a bill making appropriations for a new program not in existence at the time the Governor made his recommendation did not require a three-fifths vote. We include a copy of that opinion with this letter. The cases discussed therein and the matters which are now before the Legislature lead us to the conclusion that the amount which is appropriated by LB 816A \$82.6 million dollars is the same as and not in excess of the amount recommended by the Governor in his budget messages to the Legislature.

We have also this date responded to a request for an opinion from Senator DeCamp on the same issue. A copy of that response is included herein.

Sincerely,

PAUL L. DOUGLAS
Attorney General


Patrick T. O'Brien
Assistant Attorney General

PTO/cmb/fl

Encls.

cc: Patrick J. O'Donnell
Clerk of the Legislature